

STATE OF INDIANA

IN THE MORGAN COUNTY CIRCUIT COURT

COUNTY OF MORGAN

CAUSE NO: 55C01-1204-JC-144

IN THE MATTER OF AA

A CHILD ALLEGED TO
BE IN NEED OF SERVICES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW THE COURT and having held a hearing on May 9, 2012 and the Morgan County Deputy Prosecutor (hereinafter 'Prosecutor'), Robert Cline, appearing for the Prosecutor's Office and the Indiana Department of Child Services (hereinafter 'DCS') appearing by Douglas Purdy, and the parties having presented evidence and testimony and the Court now finds as follows:

- 1) That the arguments provided herein were provided by oral argument and in writing.
- 2) That the case was filed initially by the Prosecutor when they believed that the DCS essentially refused to file a CHINS on the child in this matter.
- 3) That the Prosecutor presented argument as follows:
 - a. That the Prosecutor had the right to file a Child In Need of Service Petition (CHINS) under Indiana Code 31-34-1-6.
 - b. That under IC 31-34-7-1 and 31-34-7-2 an "intake officer" may be working in the county's Probation Department.
 - c. That IC 31-9-2-62 states that an " 'intake officer', for the purposes of the juvenile law, means a probation officer or a caseworker who performs the intake, preliminary inquiry, or other functions specified by the juvenile court or by the juvenile law."
 - d. That under IC 31-9-2-62, a probation officer from the Morgan County Probation Department may make a preliminary inquiry to determine whether the interests of the child requires further action for the purposes of IC 31-34-7-1.
 - e. That after making this preliminary inquiry the intake officer is required to send a copy to attorney for the Department of Child Services (DCS) under IC 31-34-7-2.
 - f. That while the intake officer is required to send the preliminary inquiry to the attorney for the DCS, IC 31-34-7-2 does not prohibit the

intake officer from providing the preliminary inquiry to the Prosecuting Attorney whose duties naturally overlap with DCS under the juvenile law.

- g. That the Morgan County Probation Department normally does provide the preliminary inquiry to the Prosecuting Attorney.
- h. That IC 31-34-7-3 states, "The person representing the interests of the state and receiving the preliminary inquiry and recommendations shall decide whether to request authorization to file a petition. This decision is final only as to the office of the person making the decision."
- i. That the phrase "person representing the interest of the state" is plainly more inclusive than the language of "the attorney for the department" from IC 31-34-7-2. This phrase is inclusive enough to cover the Prosecutor.
- j. That this language means that the legislature meant to allow anyone who is representing the interest of the state and has received the preliminary inquiry and recommendations should be allowed to request authorization to file a CHINS petition.
- k. That IC 31-34-7-3 language of "[t]his decision is final only as to the office of the person making the decision," should be interpreted to mean that other offices should be allowed to request authorization to file a CHINS petition because if DCS was the only office allowed to request authorization to file a CHINS petition that this language would not be needed.
- l. That IC 31-34-9-1 states, "the attorney for the department: (1) may request the juvenile court to authorize the filing of a petition alleging that a child is a child in need of services: and (2) shall represent the interests of the state in this proceeding and at all subsequent proceedings on the petition.
- m. That when IC 31-34-9-1 was amended to remove the phrase, "the prosecuting attorney," this did not remove the prosecuting attorney's right to request authorization.
- n. That removing the language of "the prosecuting attorney," from IC 31-34-9-1 did nothing more than require only DCS to represent the interest of the state in proceedings occurring after a request to authorize the filing of a petition is made by either DCS or a person representing the interest of the state. This would prevent the prosecuting attorney from being required to represent the interests of the state in any subsequent proceedings after deciding to request an authorization to file a CHINS petition.
- o. Under IC 31-34-7-3, a prosecuting attorney may request authorization to file a CHINS petition and the amended IC 31-34-9-1 does not leave IC 31-34-7-3 null and void.

4) That the DCS presented argument as follows:

- a. That the Morgan County Prosecutor did not have the right to file a CHINS petition under IC 31-34-1-6.

- b. That under the rules of statutory construction when a statute's express language is clear and unambiguous this controls the interpretation and the rules of statutory construction apply.
 - c. That DCS agrees with the Prosecutor that under IC 31-9-2-62, an "intake officer" can be a probation officer.
 - d. That DCS does not agree that under IC 31-34-7-2, an "intake officer" has the discretion to provide the Prosecuting Attorney with the preliminary inquiry and recommendations.
 - e. That IC 31-34-7-2 clearly and unambiguously states the duties of the "intake officers" concerning providing the preliminary inquiry and recommendations to only DCS.
 - f. That IC 31-34-7-2 was amended in Public Law 146-2008 to remove the reference to the prosecuting attorney in the statute, and this shows that the legislative intent was to make sure that only the attorney for the DCS should receive the preliminary inquiry and recommendations.
 - g. That IC 31-34-9-1 was also amended in Public Law 146-2008 to remove the reference to the prosecuting attorney in the statute.
 - h. That the Prosecutor is attempting to draw a fine line between "requesting authorization to file a petition" and filing the petition itself by stating that the attorney for DCS would represent the interest of the state "after a request to authorize the filing of a petition is made."
 - i. That IC 31-34-9-1 indicates that DCS represents the interests of the state at the time authorization is sought from the juvenile court and not after a request is made. This means that the General Assembly was clear that only the attorney for DCS should be representing the interests of the state both at the time of making a decision about whether to file a CHINS petition and at the time authorization is sought to file a CHINS petition.
 - j. That the Senate Enrolled Act 286.1.76 (Effective July 1, 2012) created a study to determine if prosecuting attorneys should be allowed to file a petition alleging a child is in need of services under IC 31-34-1-6.
 - k. That the Senate Enrolled Act 286.1.76 asserts that prosecutors do not currently have the discretion to file a CHINS petition, because a study has been commenced to determine if the prosecuting attorneys should be allowed to file a petition.
- 5) That upon a complete review of the history of the statutes cited and having heard the arguments it is unfortunate that the reading of the DCS is a correct one at this time.
- 6) That the Prosecutor does not have statutory authority to file a CHINS petition, and therefore the court must dismiss its CHINS petition.
- 7) That while the end results of the modifications to the statutes in the past resulted in the removal of the prosecutor as one that could file charges, this

court cannot imagine the intent was to provide DCS with a power that goes unchecked.

- 8) Put simply, because the legislature removed the prosecutor language, they have essentially left all decisions to file or not to file in the hands of the DCS with no option of being heard from anyone else.
- 9) That while the DCS argued they have an ombudsman working to review their filings, it is doubtful that the DCS is taking the requests to file in these CHINS 6 type cases to that ombudsman for review.
- 10) That it can only be assumed by this Court that the prosecutor language that was in place before the modifications was there to in fact provide a checks and balances when/if the DCS is not doing their job of protecting children.
- 11) That while this Court agrees that a prosecutor should not be the one handling a case after it has been filed, since they are not the subject matter experts, it would seem a grave mistake to have removed them or anyone else from the ability to file cases.
- 12) That this Court struggled with creating an order that forced an appeal by the DCS to get this issue out in the open but it would be completely wrong to find for the Prosecutor hear and thereby create an obvious order that would be overturned by an appellate court.
- 13) Still, however, the issue presented here in this case cannot simply be left to die as it is likely one that is problematic throughout the State of Indiana in regards to how DCS is refusing to handle mental health/disease cases as they should be.
- 14) It has been made clear and apparent by words from the director in the past, as well as the arguments made by the DCS that children facing mental illness/diseases/afflictions are not getting treated in a manner that benefits the children or the citizens of Indiana.
- 15) In this particular case alone, even though the DCS filed a CHINS case AFTER the Prosecutor did, their actions in filing were nothing more than a disingenuous attempt to avoid the hearing that was held by this court.
- 16) To argue that their own CHINS filing was anything more than that insults not only the court but also the children of Indiana that are in need of services for mental illness/defects.
- 17) There were seven calls to DCS containing similar and even the EXACT SAME information that the Prosecutor relied upon and yet not until this action

arose and was to be heard in a public forum did DCS take steps to file any type of CHINS action.

- 18) That in fact the Prosecutor had met with the DCS prior to filing their motion in this case and DCS still did nothing until the Prosecutor filed his motion and a public hearing was set.
- 19) The second argument by DCS, that was first made on the date of the hearing, was that services had now begun for the child as the mother had come forth asking for help and therefore there was no need for this hearing.
- 20) That the court, while glad that the child was suddenly now receiving services, still was forced to deal with the issues and allegations that the Prosecutor had the right to file a CHINS case when the DCS simply would not.
- 21) Simply because the DCS had now decided to offer services still did not address the very real and emergent needs to find out if DCS was or was not handling mental health issues as they should.
- 22) Additionally, the arguments heard at the open hearing were in exact conflict with many of the statements made by Director Jim Payne at a committee hearing at the Statehouse, and the actions of DCS prior to the vote at that hearing.
- 23) DCS intended to rid of CHINS 6 by way of legislation and only pulled that desire to eliminate the CHINS 6 when several groups and individuals appeared to oppose such a move at the legislative hearing.
- 24) Now, in open court, the DCS asserted that they were looking into ways to improve their CHINS 6 filings which flies into the face of the statements made by the director that he does not believe filing CHINS 6 is good for the kid or the parents as it "pits" them against one another.
- 25) This court also heard support for this fruitless argument and is disturbed by the averment by the DCS attorney that a CHINS 6 would not be considered until a child/their parent has exhausted all possible help.
- 26) So by the argument of the DCS, not until a parent/child are at wits end will the DCS consider helping these children and their mental health issues.
- 27) What is more likely under that argument is that the mental health child will commit some delinquent act because their condition has gone untreated and by then the DCS is thereafter satisfied that the child can and should be handled as a juvenile delinquent (JD).

- 28) This belief by this Court was bolstered again by the DCS attorney's arguments that this child in this case has committed JD acts and should therefore be handled in that arena, not the CHINS arena.
- 29) In addition to "pitting" argument and the "wait until the parents/children are at wits end argument", the Court also was informed by the DCS that the DCS has an additional layer of bureaucracy in deciding if CHINS 6 cases should be filed in the first place.
- 30) Apparently when calling the 1-800 number for abuse/neglect, even if it seems a CHINS case is appropriate, the request for a CHINS 6 case must go through an additional screening before permission to file such cases with a court.
- 31) That there never was a valid answer as to why this additional level of scrutiny for mental health/defect CHINS 6 filings is in place and leaves open serious questions about whether DCS is in fact doing what they are supposed to be doing to help these children under CHINS 6 and/or mental health cases.
- 32) The DCS also argued in their initial responses and arguments that the child in this case was likely a juvenile delinquent (JD) and she and others similar to her should be handled in that arena rather than in the CHINS arena.
- 33) The DCS arguments asked for this hearing to be stayed, included multiple motions to correct errors and even made a motion for a change of judge rather than addressing the serious issues facing the child in this case and similar children around the state.
- 34) The DCS gleaned over the arguments that JD court is a stigma and asserted that JD court could handle many of the mental health concerns of this child and others in a similar situation.
- 35) What again DCS failed to recognize is the stigma of a JD on countless career opportunities down the road, public assistance availability, future criminal sentence determinations and is a system that even this court knows is not capable of dealing with severe mental disease and defects.
- 36) In fact, the remedies available in JD court include probation, some minor mental health counseling and at the extreme some juvenile delinquent facilities that are ill equipped to handle mental disease and defects.
- 37) It is without a doubt that JD actions cannot handle mental health issues as they should be, leaving the only reasonable option to be aid from the DCS.
- 38) What this also leads to is the conclusion that it would seem the DCS is simply waiting around until the child commits such egregious or dangerous acts that the JD system has no choice but to file charges against a child with a mental

disease/defect and then the DCS can simply ignore any pleas thereafter to aid such a child. (As has happened in this case)

- 39) The DCS simply failed to see the JD/JC distinction in court and chose to argue that those concerns by the prosecutor of labeling a child a JD were of any importance.
- 40) The DCS also pointed to the fact that there is a summer study commission to determine if prosecutors should be able to file CHINS cases.
- 41) That the DCS asked for this hearing to be stayed until that commission could be heard, but honestly the issue to be tackled will do little, if anything, to address these immediate and emergent concerns.
- 42) The immediate concerns are what is being done to protect the children of Indiana from themselves when they are consumed by mental disease or defects.
- 43) That while all of the parties agreed in court that CHINS should not be used as a way to avoid JD status, there is no cogent argument of why children suffering from serious mental disease or defects should not/are not being handled by the DCS rather than within the JD system.
- 44) Whether the prosecutor can file a case or not is of little import while Indiana's mentally affected children are not getting the services that are needed.
- 45) It was reported in the last year that the DCS handed back at least a million dollars to the state from their budget which is appalling in light of the information provided in this case, as well as at least two other cases which are apparently waiting in the wings.
- 46) The Court questioned the DCS attorneys about statements made by local DCS personnel that DCS is not equipped to handle the mental illness issues of children and is perhaps the reason these cases are so closely scrutinized.
- 47) The attorney for the DCS denied this assertion, but in either case, if there need to be more services in place to aid these children/their parents, then so be it.
- 48) It is impossible to believe that Morgan County is the only county facing this dilemma with child mental health issues and in light of the constant barrage of paperwork, motions and arguments provided by DCS, it can be assumed they are aware of these problems and would prefer to address them by arguing technical definitions within the statutory law, making multiple moves to delay a public hearing and work under the personal beliefs of their director rather than finding solutions.

- 49) Quite simply, the system for reviewing/filing cases by the DCS is broken when it comes to CHINS 6/mental health, which begs the question whether the entire system is currently broken.
- 50) The legislature must find a way to fix this system so that when children that have been diagnosed with serious mental health issues are a danger to society or themselves, they get the necessary treatment.
- 51) The state legislature must implement programs to clearly identify these children, their defects, and provide services through the DCS to aid them in their treatment to ensure they, their families and the citizens of Indiana are safe.
- 52) One answer may be to reinsert the prosecutor language into parts of the statute.
- 53) Another answer as suggested by the Court is to allow a JD court the ability to hear motions from either a prosecutor/public defender/parent to convert a JD case to a JC case could be an answer to handling some of the concerns that were raised by the prosecutor in this case.
- 54) As well, the DCS could run concurrent planning if necessary with a JD and JC case tracking one another, much as they ask to do with JC and JT cases running concurrently in some CHINS cases.
- 55) By allowing a JD court to hear evidence as to why a case should be a JC case (for any of the CHINS reason, not just CHINS 6) rather than a JD one, a judge will be the check and balance that DCS is apparently lacking at this time.
- 56) The only problem with this solution presented by the Court is that it does not completely address those children that have yet to get to a JD action and are in need of help when they are calling the DCS hotline and being screened out.
- 57) Whatever the system that is implemented by the legislator, there must also be some checks and balances in place over the DCS so that these types of problems do not become an issue again.
- 58) This court is well aware of the costs of putting together more services for the mentally afflicted children of Indiana, but there are a host of concerns if we do not.
- 59) First, as argued in court, the children will become JD labeled for life, a label that clearly follows that child forever thereafter.
- 60) Second, those children will one day become adults and if beaten down in the JD system that was unable to handle their mental issues, will often become

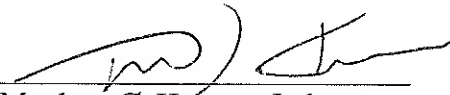
adult criminals that will be warehoused without much aid to deal with their mental health.

- 61) Third, those children will one day become parents and be unable to handle the situations in front of them with their own mental health affected child and will end up again either in adult court or in CHINS court.
- 62) That while it is great to save money and return funds to the coffers of the State, it would seem prudent that funds be spent to aid the children of Indiana that are clearly facing mental disease or defects.
- 63) While no one wants their tax dollars spent on frivolous pork projects, resources to provide for the healing and protecting of Indiana's children must be a place where more money and resources are spent.
- 64) As to the question of this hearing being an emergency, it is evident that the DCS has not been providing services that are needed to children with mental health issues.
- 65) The simple fact that suddenly once the prosecutor filed their case, the DCS filed a CHINS motion as to this child was also so disingenuous and fake that this court was left with little choice but to deem this hearing an emergency.
- 66) After seven calls to DCS, over 80 calls to law enforcement, and a review of all of the law enforcement contacts, including a video of this child banging the child's head against a car multiple times while angry, how could this not be an emergency?
- 67) DCS can argue what they want, but to make a claim that this court was wrong in deeming this hearing emergent and necessary only underlies every single concern listed above about the fact that DCS is not dealing with mental health issues of children in this state as they should.
- 68) Therefore although DCS argues that this case was not an emergency and that this court was therefore divested of jurisdiction upon the filing of their change of judge motion, their arguments fall flat and once again their Motion to Correct Errors is denied.
- 69) As DCS has seen it necessary to make a change of judge motion to try and avoid an open hearing on this matter, now that the emergency has been concluded, there is no choice but to divest jurisdiction.
- 70) The parties agreed on Judge Christopher Burnham and this case, as well as the case filed by the DCS which has not been ruled on at this point shall be transferred to his court.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT:

- 71) That the Prosecutor does not have the right to files a CHINS petition and the petition must be dismissed.
- 72) That this matter was clearly an emergency by any definition so once again the Motion to Correct Errors as well as the Motion to Continue or Delay the Hearing were properly denied.
- 73) That the DCS has filed a change of judge motion under this cause number and this case will be transferred to Superior Court II along with the new CHINS filing that was made by the DCS.
- 74) Judge Christopher Burnham was agreed upon by both parties.

MAY 15 2012


Matthew G. Hanson, Judge
Morgan Circuit Court

DCS
Prosecutor
RJO
File
Burnham
CASA Director